1 LATHAM & WATKINS LLP
   Daniel M. Wall (Bar No. 102580)
2   Alfred C. Pfeiffer, Jr. (Bar No. 120965)
   Christopher S. Yates (Bar No. 161273)
3   Sadik Huseny (Bar No. 224659)
  505 Montgomery Street, Suite 2000
4 San Francisco, California 94111-6538
  Telephone: (415) 391-0600
5 Facsimile: (415) 395-8095
  Email: Dan.Wall@lw.com
6 Email: Al.Pfeiffer@lw.com
  Email: Chris.Yates@lw.com
7 Email: Sadik.Huseny@lw.com

8 Attorneys for Defendant
  APPLE INC.

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10   UNITED STATES DISTRICT COURT

11   NORTHERN DISTRICT OF CALIFORNIA

12   SAN JOSE DIVISION

13

14 IN RE APPLE & AT&TM ANTI-TRUST   CASE NO. C 07-5152 JW (RS)
  LITIGATION

15   **DECLARATION OF SADIK HUSENY IN**
                  SUPPORT OF DEFENDANT APPLE INC.'S
16   **OPPOSITION TO PLAINTIFFS' MOTION**
                 TO COMPEL THE PRODUCTION OF
17   **DOCUMENTS, INCLUDING IPHONE**
                 SOURCE CODE

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1   I, Sadik Huseny, declare as follows:

2   1.   I am an associate with the law firm of Latham & Watkins LLP, counsel for

3   defendant Apple Inc. ("Apple") in the above referenced action. I have personally participated in

4   all meet and confer discussions with plaintiffs regarding the production of the source code for

5   Apple's software update version 1.1.1 for the iPhone. As a result, I have personal knowledge of

6   the matters herein.

7   2.   Between January and March, 2009, Apple and plaintiffs exchanged

8   document requests and corresponding responses and objections. As part of these document

9   requests, Apple requested that plaintiffs produce their iPhones for forensic examination, and

10   plaintiffs requested that Apple produce various documents related to plaintiffs' 1.1.1 claims.

11   Apple agreed to plaintiffs' request for documents related to their 1.1.1 claims, but explicitly

12   objected to the production of any source code.

13   3.   In or around June, 2009 I began discussing with plaintiffs' counsel a

14   proposed compromise whereby Apple would produce iPhone OS versions 1.1.1 source code in

15   exchange for the production of the iPhones that are the subject of plaintiffs' complaint (including

16   those iPhones allegedly "bricked" by iPhone Operating System ("OS") 1.1.1.) for forensic

17   examination by Apple.

18   4.   Plaintiffs' counsel claimed a few days before Apple was scheduled to begin

19   taking plaintiffs' depositions that they had discovered that all of the iPhones to be forensically

20   examined were not available for examination by Apple because the iPhones in question had either

21   been replaced under warranty, had been lost, or had been given away.

22   5.   Despite this development, Apple notified plaintiffs that it would not object

23   to the production of the portions of iPhone OS version 1.1.1 source code related to the baseband

24   (specifically, baseband firmware and BBUpdater), subject to consent from Infineon Technologies

25   A.G. ("Infineon"), the owner of the baseband firmware.

26   6.   Apple and plaintiffs agreed that any review of iPhone OS version 1.1.1

27   source code, or related code, would be made pursuant to the standard protocol Apple uses in all

28   litigation whereby a party seeks to examine source code. This protocol requires examination via a

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1   secure computer, in a secure conference room, and with stringent protections in place against

2   copying, cutting-and-pasting, saving, storing or transferring the code in any capacity apart from

3   carefully controlled printing protocols.

4   7.   During the course of Apple's document production, plaintiffs received

5   nearly 300,000 pages of documents from Apple. Plaintiffs did not raise any issue with Apple's

6   objection to producing source code until in or about June, 2009, and only after plaintiffs

7   apparently discovered Apple's objection in the context of Apple pressing plaintiffs to produce

8   their iPhones for forensic examination.

9   8.   On or about October 12, 2009 Plaintiffs served Apple with a Second Set of

10   Document Requests where for the first time they explicitly sought the production of 1.0.2 code.

11   9.   Until November 17, 2009, plaintiffs were demanding the production of "the

12   entire source code for Version 1.1.1 of the iPhone operating system" and failed to engage in

13   discussions with Apple aimed at narrowing or identifying specific portions, if any, of the version

14   1.1.1 source code they believed were needed for their motion for class certification despite

15   repeated requests.

16   10.   After counsel for plaintiffs sent me an email on Tuesday, November 17,

17   2009 providing identification of the specific portions of the 1.1.1 source code that they claimed

18   were relevant, I suggested that plaintiffs refrain from filing a motion to compel for a few days so

19   that the parties could engage in meet and confer, including an off the record discussion with a

20   senior Apple engineer, to attempt to reach agreement on which portions of the 1.1.1. source code

21   were truly relevant to plaintiffs' claims. Instead of agreeing to do so, plaintiffs filed their motion

22   to compel on Wednesday, November 18, 2009.

23   11.   During my discussions with plaintiffs' counsel, they have stated that their

24   computer sciences consultant is named Dr. Strawn.

25   I hereby certify under penalty of perjury under the laws of the State of California

26   that the foregoing is true and correct and that this declaration was executed on December 1, 2009

27   in San Francisco, California.

28
                                    _____/s/ Sadik Huseny_____
                                            Sadik Huseny

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